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## ***WHAT ABOUT OUR RIGHTS? The State and Minority Religious Communities in Croatia: A Case Study***

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**ABSTRACT:** In December 2007, three registered minority religious communities in Croatia took a discrimination case against the Republic of Croatia to the European Court for Human Rights (ECHR) in Strassbourg. This paper documents the entire case, from the public announcement of the lawsuit to the final decision of the ECHR, which ruled in favour of the three religious communities. In a broader sense, this case study deals with church-state relations in Croatia and points to some important consequences of the case for religious rights, religious freedom, and governing by the rule of law in Croatia.

**KEYWORDS:** minority religious communities, religious discrimination, state, Croatia

### **INTRODUCTION<sup>1</sup>**

In December 2007, three registered minority religious communities in Croatia took a discrimination case against the Republic of Croatia to the European Court for Human Rights (ECHR) in Strassbourg, i.e., because of impossibility to conclude *the Treaties about questions of mutual interest* with the government for regulating different, for them, important rights. The communities represented the traditional protestant church (Protestant Reformed Christian Church in the Republic of Croatia) and two new evangelical Protestant churches (Full Gospel Church and Word of Life Church). A public announcement of the case in January 2006 immediately attracted our attention because it is the first such case to appear at the ECHR from Croatia. Therefore, the case has consequences for religious rights, religious freedom, social justice, and governing by the rule of law in Croatia.

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To shed light on the broader context of the case study, some theoretical concepts, together with the socio-religious and legal situation in Croatia, are presented.

### **THEORETICAL PERSPECTIVES**

Several theoretical concepts from sociology, in general, and sociology of the law, in particular, can help understand and interpret the case: legal social control, discretion, discrimination, and third-party advocacy (Chambliss 1979; Richardson 2004, 2006). The role of the European Convention of Human Rights (Convention), together with rulings of the ECHR and its limitations, are also important in contextualising the case study.

The concept of *social control* (most generally understood as social processes by which the behaviour of individuals or groups is regulated) refers here to the legislative effort of the state to exert social control over minority religions. Such control can result in discrimination towards some group and is not in the interest of social justice.

Legal social control of new religions started in the U.S. in the 1960s and 1970s with the appearance of controversial new religious groups. Comparing those developments with further developments in Western Europe and later in post-communist countries of Central and Eastern Europe (CEE) can help place the situation in Croatia in a broader context.<sup>2</sup> In his sociological and historical introduction to regulating religion, Richardson (2004) showed how in the U.S., different states, local jurisdictions, individuals and other opponents of new religions attempted to initiate legal actions against them. These included issues of consumer protection, a conservatorship order against members of the new religions, putting limits on fundraising and proselytising, imposing restrictions on the construction of religious buildings/facilities, and attempts to officially define certain religious groups as unacceptable.<sup>3</sup> Efforts to define participation in such groups as a mental health problem using pseudo-scientific concepts such as “brainwashing” and “mind control” were particularly important and had worldwide, long-term consequences. This American ideology has been exported to the rest of the world and become a powerful weapon in exerting social control over new religions (Richardson and Introvigne 2004).<sup>4</sup> Child abuse accusations are a recent and a particularly powerful weapon used against new religions. These accusations appeared when the new religious groups matured, as well as when members married other members and had children. Regardless of whether the charges have any substance, the impact on the religious group accused can be profound, especially given the accompanying media coverage, which results in huge negative publicity (Richardson 1999).

In Western European countries, controversies about new religious movements (NRMs) and other minority religions have been present for almost two decades. However, reactions to new religions in different countries vary, as do the legal actions aimed at controlling these movements. Countries with strong federal paternalism

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<sup>2</sup>Here, it appears worth mentioning Richardson’s concern voiced fifteen years ago that Western European societies and institutions are often idealised by those in the post-Communist world, although “they have not shown much concern about protecting the rights of participants in new and smaller religious groups” (Richardson 1997, 257).

<sup>3</sup>Although some of these attempts came very close to being enacted in law, most were eventually dismissed.

<sup>4</sup>In the U.S., these ideas resulted in the appearance of anti-cult movements and thousands of kidnappings and deprogramming of participants of new religions. “Self-help remedies and civil court actions became important methods for exerting control over alternative religious movements” (Richardson 2004, 3).

such as Germany, France, and Belgium have put in place major federal-level actions against NRMs, whereas Italy, The Netherlands, and Switzerland have shown a lack of major negative actions (Beckford 2004; Fautre 2004; Richardson and Introvigne 2004; Seiwert 2004). France enacted a quite punitive About-Picard law in 2001<sup>5</sup> and promotes its views about “sects” and cults internationally as part of its foreign policy. For instance France spread its model to Poland (Beckford 2004; Doctor 2004; Koscianska 2004). Western European countries have adopted different approaches to dealing with NRMs, from consumer protection approaches and anti-cultism to “brainwashing” and child abuse accusations. Austria has established a hierarchy of religious groups for instance. Lists of unacceptable religious groups have also been drawn up by some countries, and governmental or parliamentary bodies have been established to deal with “sects” (Seiwert, 2004). According to Richardson and Introvigne (2004), there are official reports on NRMs in France, Belgium, Switzerland, Germany, Italy, and Sweden

Post-communist European countries also show differences in their efforts to exert social control over minority religions. In Poland these include producing official reports on “cults and sects,” providing official support for anti-cult movements, with the accompanying support of the Catholic Church (Doctor 2004; Koscianska 2004). In Russia these include imposing registration limitations, and requirements regarding the historical existence of religious groups for a number of years and passing restrictive laws targeting minority religions, all supported by the Russian Orthodox Church (Richardson, Krylova, and Shterin 2004). In the Czech Republic, there is a two-step registration procedure that labels religious communities differently and provides for the use of discretion in disallowing new religions to register (Müller 2004). The presence of a dominant religious tradition (e.g., in Poland, Russia, and Croatia) or a more pluralistic religious situation (e.g., Hungary) is also an important variable that affects the legal system and the actions of the states towards minority religions.

Ferrari’s (2003) analysis of church-state relations in post-communist Europe is instructive and appropriate in this context. He stressed that post-communist CEE countries missed the opportunity to develop a new model of church-state relations and instead adopted the existing Western European model. In relation to the case discussed in this paper, the following two areas where Ferrari suggested potential progress could be made are particularly important (Ferrari 2003, 422):

The need to guarantee the mobility of religious denominations throughout the levels of the hierarchical pyramid in which they are distributed, allowing passage from the lowest (registration, recognition) to the higher ones (obtaining a statute of public corporation, stipulation of agreements with the state);

The need to reduce a degree of discretion enjoyed by public authorities in establishing the level each religious denomination may aspire to in the aforesaid pyramid, and to ensure an efficient system of appeal against the decisions of the executive power.

Another relevant concept used is *discrimination*, which refers to “restrictions placed on religious practices or organisations of a religious minority in a state that are not placed on those of the majority religion” (Fox 2007, 49). According to Fox (2007), distinguishing between a majority group and a minority group implies prejudice towards and differential treatment of some religious communities.

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<sup>5</sup>“Law number 2001-504 of 12 June 2001 intended to reinforce the prevention and repression of sectarian (cultic) groups that infringe on human rights and on fundamental freedoms”.

In relation to the case study, the role of the European Convention for Human Rights is important as well. The ECHR plays “a very important role in defining religious freedom and the meaning of religious pluralism in an expanding Council of Europe, as well as in the rest of the world” (Richardson and Garay 2004, 223). Evans and Thomas (2006) pointed out that the approach to religion by the ECHR<sup>6</sup> is that freedom of religion is the foundation of a democratic society and indissociable from pluralism. Thus, states that ratify the Convention must be democratic and pluralistic to comply with its requirements (Evans and Thomas 2006). As the ECHR has legal standing and some degree of enforcement, all states that ratify the Convention agree to the ECHR’s jurisdiction over human rights.<sup>7</sup> In addition, according to Evans and Thomas (2006) the ECHR can develop case law, which will then be influential in the law and practice of these states. However, there have been serious critiques of the treatment of minority religions by the European Parliament and the ECHR, as well as critiques of differences in their acting towards dominant and original members of the Council of Europe. As Richardson and Garay (2004, 233) pointed out:

...it does not seem an accident that Article 9 started seeing some action (after 40 years of no violations found by the Court) right after the Soviet Union collapsed, and a number of former Soviet Union countries began seeking for membership in the Council of Europe.

These include suggestions that there is a significant degree of difference among individual states in their efforts to control or manage minority religions and that the European Parliament urged member states to take strong action about sects in Europe to effect more control over all religions in Europe (Richardson 1995). This means that ECHR can also serve as an international body for social control, but with double standards.

In an analysis of principles, articles, and case law relevant to freedom of religion or beliefs in the European Convention of Human Rights and in the ECHR decisions, Evans found that they approach their task in an incoherent and inconsistent fashion and that “the principles interpreted from the stipulated articles generally favour the state, giving less importance to freedom of religion and beliefs (Evans 2001, 2). Evans argues that the Court needs to develop a philosophy of freedom of religion that emphasises the autonomy of the individual “that will also promote the notion of tolerance and pluralism in a society” (Evans 2001, 25). As Croatia is a signatory of the Convention and will become a new member state of the European Union in 2013, its reaction to the ECHR’s judgement concerning this case is not irrelevant.

In our analysis, the *discretion perspective* is also important because it can limit the religious freedom of some participants within the legal system and enable governmental regulation of social control (Richardson 2004). This is particularly obvious when some governmental bureaucrats and law enforcement personnel make decisions based on their perceptions of situation or their personal values, biases, misinformation, or self-interest (or group or even perceived “higher” interest). Moreover, as Barberini (2003) pointed out, the bureaucratic apparatus, often unconsciously, carries with it from communist times a hostile mentality towards religious denominations, a need for control,

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<sup>6</sup> This approach is most clearly stated in one passage from the Kokkinakis v. Greece case (Evans 2006). In this case, the Court for the first time found a violation of Article 9 (Richardson 1995). Since then, it has been cited in every major religious freedom case that this court has dealt with (Evans 2006), including the case presented in this paper.

<sup>7</sup> The Republic of Croatia signed the Convention on November 6, 1998.

and even a need for exercise of state jurisdiction, which is revealed in adversarial attitudes towards religious communities.

*Third-party advocacy* in this context refers to activities of third-party partisans in defending rights of religious minority organisations/communities. They could be individuals such as political leaders and members of parliament, groups such as political parties, different NGOs such as Amnesty International, and pan-governmental organisations such as the ECHR (Richardson 2004).

## **SOCIO-RELIGIOUS AND LEGAL CONTEXT IN CROATIA**

In common with most post-communist CEE countries, the change of the position of religion and the church in Croatia after 1990 has been followed by a considerable increase in declared religiosity (Črpić and Kušar 1998; Marinović Jerolimov 2001; Zrinščak, Črpić, Kušar 2000). The strong identification with religion and the church became almost complete in the population. In terms of a high level of religiosity among European countries, it lags behind only Poland, Romanian Transylvania, Malta, Portugal, Italy, and Ireland (Davie 2000; Zrinščak, et al. 2000). According to the 2001 census, 94 percent of the Croatian population belongs to some religion, and 6 percent are agnostics, undeclared, not religious, or listed as unknown. The vast majority (87.83 percent) declared themselves Catholic, with small groups of Orthodox Christians (4.42 percent) and Muslims (1.28 percent), while adherence to other different religious communities was altogether slightly over 1 percent. The majority position of Catholics, the historical, cultural, and social involvement of the Catholic Church in Croatia, the recent war, as well as different social processes after the 1990s, all influence church-state relations. These influences were particularly apparent and (more or less) visible in the development of legislation regarding the regulation of religion in Croatia as shown by Zrinščak (2004) in his presentation of the development of the Religious Communities Act.

### ***Relevant Legal Documents***

For the purpose of this analysis, the process of forming the following legal documents is relevant, together with their content: Constitution of the Republic of Croatia, agreements between the Government of the Republic of Croatia and the Holy See, the Law on the legal status of religious communities (Religious Communities Act), agreements with other religious communities, and the government's sub-legal act "the Instruction."

#### *The Constitution of the Republic of Croatia*

Religious freedom, religious rights, and the protection of these rights are defined in Articles 14, 17, 39, and 40. Article 41 is critical for the case study because it provides the basis for establishing other legal and official acts concerning religious communities:

All religious communities shall be equal before the law and shall be separated from the state. Religious communities shall be free, in conformity with law, publicly to perform religious services and to open schools, teaching establishments, and social and charitable institutions and to manage them, and they shall in their activity enjoy the protection and assistance of the state (Constitution of the Republic of Croatia, 2001, Appendix).

#### *Agreements between the government of the Republic of Croatia and the Holy See*

After establishing a diplomatic relationship in 1992 between the government of the Republic of Croatia and the Holy See, regulation concerning the Catholic Church was completed by signing *four agreements of mutual interest with the Holy See* in the period from 1996 to 1998 (agreements concerning legal questions about the treatment of Catholic believers in the army and the police, about cooperation in the field of education and culture, and about economic questions - Appendix). By signing first the agreements of mutual interest with the dominant

Catholic Church, the government recognised its special historical and cultural role and social position. Controversies arose not only concerning the content of the agreements, but also concerning the secrecy in the process leading to them (Zrinščak 2004, 305-306).

The fact that the government reached these agreements *before* approving the Religious Communities Act had consequences for further regulation of the relationship with other religious communities.

#### *The Religious Communities Act*

In 2002, the Religious Communities Act was finally approved. However, as a general act, it should have preceded the agreements with the Holy See (Zrinščak 2004). Article 9 of the Religious Communities Act is crucial to our analysis. It states:

Issues of mutual interest for the Republic of Croatia and one or several religious communities **can be** settled by a separate Agreement signed by the Croatian Government and a religious community (Religious Communities Act, *Official Gazette of the Republic of Croatia* [Narodne novine ] 83, 2002, Appendix).

The wording of this article implies the possibility of *discretion* that the government can exercise in regulating relationships with religious communities and affects how their rights are defined in the agreement. The government used such discretion to sign agreements with *some* religious communities immediately after the law came into force.

#### *Agreements with other religious communities*

The government first signed the *Agreement about questions of mutual interest* with the Serbian Orthodox Church and the Islamic Religious Community (2002) and later with the following: the Evangelical Church, the Reformed Christian Church, the Evangelical Pentecostal Church and its subjoined members the Church of God and the Union of Pentecostal Churches, the Adventist Church and its subjoined members the Reformed Movement of the Seventh Day Adventists, the Union of Baptist Churches and its subjoined member the Council of the Churches of Christ, the Bulgarian Orthodox Church, the Macedonian Orthodox Church, and the Croatian Old Catholic Church (2003). Signing the agreements assured material conditions and created better conditions for religious activities in general.

#### *Government approval of "the Instruction"*

In December 2004, the government of the Republic of Croatia approved "the Instruction," a sublegal act in which additional new conditions for later concluding agreements on issues of mutual interest for one or more religious communities have been determined. The consequences of the Instruction appeared in a lawsuit, which is the subject of this case study. The study aims to shed light on the relations between the state and minority religious communities, including the difference between their normative and real status.

## CASE STUDY

### *Churches Involved in the Case*

Three protestant churches were involved in the case: the Protestant Reformed Christian Church, the Full Gospel Church, and the Word of Life Church.

- The Protestant Reformed Christian Church (PRKC) belongs to the Protestant Church in a narrow sense (beliefs, liturgical practice, organisation, and discipline). It has around 150 members in Croatia.
- The Full Gospel Church was inspired by the Full Gospel Business Fellowship International Movement, which was founded in the U.S. in 1951. It is part of the worldwide Pentecostal movement, with emphasised charismatic elements. It has about 80 members in Croatia.

- The Word of Life Church views itself as a church of reformation heritage. It derives its basic teachings from the Pentecostal-charismatic movement. There are about 1,000 members of this church in Croatia.

### *Hypothesis and Methods*

We started with a *general hypothesis* that state regulation of religious communities influences their position in society and mutual relations, cooperation, and possible confrontations with the state.

Several methods were used in this case study: analysis of legal documents; analysis of the documentation of the three churches involved; semi-structured interviews with their leaders (three), their lawyer (one), and a state official (one) involved in the case; observation of public events (four press conferences) the three churches organised; and observation of and participation in public discussions (four) organised by third parties and the churches themselves.

### *Sequence of Events*

On June 21, 2004, the three churches—Protestant Reformed Christian Church, Full Gospel Church, and Word of Life Church—submitted a request to “the Religious Communities Commission” (*Komisija za odnose s vjerskim zajednicama*) to conclude an agreement with the government of Croatia that would regulate their relations with the state. They explained that without such an agreement they were unable to provide religious education in public schools and nurseries. They were also unable to provide pastoral care to their members in medical and social-welfare institutions, in prisons and in penitentiaries, or to perform civil marriages.

On December 23, 2004, the government of Croatia adopted the aforementioned Instruction, setting out the criteria that religious communities had to satisfy to conclude such an agreement with the government:

In order to enter into an agreement on the issues of mutual interest for the Republic of Croatia and one or several religious communities, such religious community/communities should fulfil one of the following two conditions:

- That they have been active in the territory of the Republic of Croatia since April 6, 1941 and that they have continued their activities without interruption and with legal succession and that according to the last census the number of their believers exceeds 6,000.
- That religious community belongs historically to the European cultural circle (Catholic Church, Orthodox Church, Evangelical Church in the Republic of Croatia, Christian Reformed Church in the Republic of Croatia, Islamic Community in Croatia, Jewish Community in Croatia).

The church or religious community that has or is to be separated from the church or religious community shall be deemed the new church, respectively religious community, the date of its separation, or founding, shall be considered as the beginning of its activities.

The Commission for the Relationship with Religious Communities shall be responsible for the enforcement of this Instruction. (Appendix)

In reply to the request to conclude the agreement of mutual interest with the government, the Religious Communities Commission informed the three churches that they did not satisfy, either individually or jointly, the historical and numerical criteria set out in the above Instruction, that is to say, that they had not been present in the territory of Croatia since April 6, 1941, and that the number of their adherents did not exceed 6,000. Referring to the Health Care Act and the Enforcement of Prison Sentences Act, it also remarked that members of religious communities that had not concluded the relevant agreement with the government of Croatia had a right to receive pastoral care in medical and social-welfare institutions, as well as in prisons and penitentiaries. Finally, according to the second provision of the Instruction, the legal successor of one of the three religious communities (the Protestant Reformed Christian Church in

the Republic of Croatia) was called into question because it is “separated from the church or the religious community.” Thus, it is deemed a new community.

Commenting on this letter, one of the leaders of the three churches (PRKC) said:

After the Instruction, it is impossible to conclude the agreement with the government. I can only say that it is discriminating against us compared with other religious communities that have already concluded the agreement, especially those that did not fulfil the required conditions.

The three churches questioned specifically three requirements: continuity, number of followers, and legal succession.

They pointed out that the first aspect of the first condition, continuity—active in the community in the territory of the Republic of Croatia since April 1941 — is controversial<sup>8</sup> because most of the fourteen communities that had concluded agreements did not fulfil that condition. For example:

- The Bulgarian Orthodox Church was established in Croatia no earlier than 2000.
- The Macedonian Orthodox Church was established in Macedonia in 1967.
- The Evangelical (Pentecostal) Church and the Union of Pentecostal Churches) were not active in Croatia in 1941.

The Protestant Reformation Christian Church (one of the three) began in 2001, and it is located in Tordinci, the oldest protestant parish (dating back to the 16th century) in Croatia.

The second condition concerns the number of followers. The three challengers stressed that only three communities concluding the agreement with the government had more than 6,000 followers (the Catholic Church, the Serbian Orthodox Church, and the Islamic Community). Table 1 shows the number of followers of other communities that had already concluded agreements with the government but did not fulfil this condition according to Census 2001 data.

Communities	Number of Followers
Calvin (three) Churches	4,053
Evangelical Church (Lutheran)	3,339
Adventists	3,001
Baptists	1,981
Evangelical (Pentecostal) Church (Evangelical Christians)	559
Union of Pentecostal Churches	336
Croatian Old Catholic Church	268
Reformed Movement of Seven Days Adventists	224
Macedonian Orthodox Church	211
Church of God	143
Churches of Christ	72
Bulgarian Orthodox Church	8

**Table 1:** Number of followers in religious communities that concluded agreements

The third condition, belonging to historical religious communities of the European cultural circle, is also controversial. As noted by the leader of Full Gospel Church:

“They divide us and make two groups: a privileged group named historical churches of European cultural heritage, such as the Catholic Church, the Orthodox Church, the Islamic Community, the Lutheran Church, the Reformation (Calvin) Church, the Jewish Communi-

<sup>8</sup> On April 6, 1941, Germany attacked the Kingdom of Yugoslavia by bombing the capital Belgrade. After four days, on April 10, the Independent State of Croatia was established (lasted until the capitulation of Italy in 1943). This resulted in the disintegration of the Kingdom of Yugoslavia.



ty, and *Others*. However, some religious communities that have concluded agreements with the government are not historical (Adventists, Baptists, Evangelical [Pentecostal] Church, Union of Pentecostal Churches, Reformed Movement of Seven Days Adventists, Church of God, Churches of Christ, and Croatian Old Catholic Church)."

Following these explanations on February 10, 2005, the three churches submitted another request to conclude an appropriate agreement with the government of Croatia, this time addressing it to the prime minister directly.

The Religious Communities Commission replied to the three churches' request in a letter on June 15, 2005, informing them again that they did not satisfy, either individually or jointly, the criteria set forth in the Instruction, but without specifying which particular criteria they did not meet. It again referred to the Health Care Act and the Enforcement of Prison Sentences Act, reiterating its opinion that members of religious communities that had not concluded appropriate agreements with the government of Croatia had a right to receive pastoral care in medical and social-welfare institutions and in prisons and penitentiaries.

In accordance with Section 66 of the Administrative Disputes Act, the three churches then lodged a request for the protection of a constitutionally guaranteed right with the Administrative Court (*Upravni sud Republike Hrvatske*) after the Religious Communities Commission's repeated refusal. They argued that the refusal, even though it had been given in the form of a letter, constituted "an individual legal act" (that is, a decision) within the meaning of Section 66 of the Administrative Disputes Act, and that this violated their constitutional right to equality of all religious communities before the law, as guaranteed by Article 41 of the Constitution.

On September 30, 2005, the three churches filed a petition with the Constitutional Court for an abstract review of constitutionality and legality, asking it to examine the conformity of the Instruction with the Religious Communities Act and Article 41 of the Constitution.

On October 1, 2006, the Constitutional Court (*Ustavni sud Republike Hrvatske*) dismissed the applicant churches' constitutional complaint, finding, *inter alia*, that Article 41 of the Constitution was not applicable in this particular case.

On October 12, 2006, the Administrative Court declared their action inadmissible, holding that the Religious Communities Commission's refusal did not constitute "an individual act" for the purposes of Section 66 of the Administrative Disputes Act, and thus was not susceptible to that court's review.

The three churches then lodged a constitutional complaint to the Constitutional Court (*Ustavni sud Republike Hrvatske*), relying again, *inter alia*, on Article 41 of the Constitution and alleging a violation of their constitutional right to equality of all religious communities before the law.

- The complaint was substantiated by the following arguments:
- The Instruction violates the provision of Article 41 of the Constitution;
- It makes impossible equality before the law in relation to communities concluding the agreements;
- The government concluded agreements with ten religious communities that do not fulfil conditions required by the Instruction;
- The Instruction discriminates in favour of the acknowledged religious communities (registered with the competent administrative body) and therefore contradicts the following provision under Article 40 of the Constitution: "Freedom of conscience and religion and free public profession of religion and other convictions shall be guaranteed";
- According to another provision of Article 89, Item 5 of the Constitution, "Decrees based on statutory authority shall not have a retroactive effect." Thus, the government cannot apply the Instruction to religious communities who submitted request for concluding the agreement before the Instruction had been enacted.

On June 5, 2007, the Constitutional Court declared the applicant churches' petition inadmissible, finding that the contested Instruction was not subordinate legislation susceptible to a review of constitutionality and legality. The Court based its decision on Article 128 of the Constitution according to which the Constitutional Court decides on the conformity of another regulation within the constitution and law.<sup>9</sup> It also ruled that the Court is not competent for the assessment of the constitutionality and legality of the proposal because the Instruction does not contain a "vital characteristic of *another regulation*,"<sup>10</sup> the constitutionality and legality of which is being assessed by the Constitutional Court."

After this judicial ruling, the three churches claimed that the Constitutional Court is authorised to protect human rights and legality according to Articles 6 (Right to a fair trial), 9 (Freedom of thought, conscience, and religion), 12 (Right to marry), 13 (Right to an effective remedy), and 14 (Prohibition of discrimination) and the second article of the first protocol (Right to education) and the first article of Protocol 12 of the European Convention for the Protection of Human rights and Fundamental Freedoms<sup>11</sup>. They also asserted that the Croatian government has violated the rule of law and that the Constitutional Court is required to prevent such violation but had not done so.

On December 4, 2007, the three churches submitted an application against the Republic of Croatia to the ECHR in Strasbourg under Article 34 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, citing a general ban on discrimination.<sup>12</sup> As their attorney explained in January 2008:

"The application is based on the factual inequality of the religious communities before the law. According to the Religious Communities Act, only those religious communities that have signed the agreement with the government can regulate religious education in schools and provide pastoral care to believers in health and social care institutions, in penitentiaries and prisons, and in the army and the police. The agreement is also required to officiate at church weddings and have entitlement to funds from the government's budget."

During this whole period, the three churches used different ways to inform the public about their problem, which could have consequences for social justice in Croatia. They organised press conferences every time they applied to courts and on every Day of Religious Freedom (January 27).

We observed the press conferences they organised on the Day of Religious Freedom in 2007, 2008, 2009, 2010, and participated in two public discussions on the issue of religious discrimination the three churches organised in January 2006 and January 2010. During these four years, the communities informed the public via numerous announcements in the media and sent these to numerous political and public officials. The three churches warned about continuing problems with the secretary of the Religious Communities Commission who repeatedly pointed out "the limited rights of minority communities" claiming that "they should

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<sup>9</sup> *Decision* is a regulation that represents ascertained government's opinions regarding the enforcement of an adopted policy and determines the tasks for the government's administrative bodies.

<sup>10</sup> *Second regulation* means a normative piece of binding legislation set out by authorised government bodies or the bodies of local or regional self-government and other authorised legal persons that regulates relations in a general way and is usually referred to an unlimited number of addressees.

<sup>11</sup> Retrieved 12 September 2011: <http://conventions.coe.int/Treaty/EN/Treaties/Html/177.htm>

<sup>12</sup> The enjoyment of any right set forth by law shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth, or other status (Protocol No. 12 to the Convention for the Protection of Human Rights and Fundamental Freedoms, 2000).

stay in the grey zone forever".<sup>13</sup> In a February 5, 2010, letter addressed to the prime minister of the Republic of Croatia, the leaders of the three churches claimed that

"The secretary repeatedly has given incompetent and false information about their churches, thus preventing them from realising the rights guaranteed under the Religious Communities Act and from concluding agreements with the government."

During an interview with the secretary in October 2010, he acknowledged his attitude about the position of religious communities and the difference between traditional (historical) religious communities and other communities. He commented that "they should all have rights but that some should have limited rights and that agreements should not be signed with some groups ever."

In addition to the general public, the leaders of the three churches also tried to mobilise different *third-party partisans*: politicians from different political parties in opposition, representatives of oppositional parties in the parliament, representatives of the European Commission in Croatia, and scientists working in the area of religious studies.<sup>14</sup> Different politicians supported the three churches in their efforts. For instance, some addressed a question in the parliament to the government concerning the issue of discrimination. One of the representatives of the biggest oppositional party in parliament at that time, the Social Democratic Party, invited the three churches to participate in a discussion of their case that he organised in January 2008 and again in 2009 on the Day of Religious Freedom. The representative is now the president of the Republic of Croatia.

The representative of the European Commission in Croatia also supported them in a letter sent to the secretary of the Religious Communities Commission on January 26, 2007, asking for an explanation and claiming that:

"Religious freedom and equality in the implementation of the Religious Communities Act are some of the basic values that the European Commission closely observes in the process of Croatia's integration into the European Union."<sup>15</sup>

Finally, the ECHR made a decision on December 9, 2010, ruling unanimously<sup>16</sup> in favour of the three churches. In its ruling, the ECHR noted the following:

- It *declared* the complaints in so far as they concern religious education in public schools and nurseries and state recognition of religious marriages admissible. The Court rejected complaints concerning pastoral care in medical and social-welfare institutions, prisons, and penitentiaries because applicant churches have the right to provide it according to the Health Care Act and the Enforcement of Prison Sentences Act.
- According to the court, *there has been discrimination against the applicant churches*. It concluded that the difference in treatment between the applicant churches and those religious communities that concluded agreements on issues of common interest with the government of Croatia did not have any "objective and reasonable justification." The Court held that there had been a violation of Article 14 taken in conjunction with Article 9 of the Convention.

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<sup>13</sup> Some of them sued him for a criminal act of imposture, giving false testimony, and misuse of a position of authority as secretary. (Data collected from interviews with leaders of the three churches and from documents outlining criminal charges against the secretary obtained by several other religious communities.)

<sup>14</sup> When the three churches first publically announced their case at the press conference, they drew our attention, and we started to work on this case study.

<sup>15</sup> The letter was obtained from the three churches involved.

<sup>16</sup> European Court of Human Rights: First Section. Case of Savez crkava "Riječ života" and Others v. Croatia (Application no. 7798/08), Judgement. Retrieved 15 February 2012 from: [www.unhcr.org/refworld/pdfid/4d5bd2972.pdf](http://www.unhcr.org/refworld/pdfid/4d5bd2972.pdf)

- The Court also held that the Republic of Croatia is to pay, within three months from the date on which the judgment becomes final, to each applicant church EUR 9,000 and to the applicant churches jointly EUR 4,570.

The government of Croatia did not appeal the ECHR's decision and paid all the costs. The government determined September 9, 2011, as the deadline for proceeding in accordance with the judgement. However, it did not implement legal or regulatory changes to prevent similar violations in the future, but formed a working group to identify and recommend changes.<sup>17</sup> The three communities appealed to different governmental bodies and individuals at different levels (secretary of the Religious Communities Commission, president of the Commission, all members of the Commission individually, the government representative in the ECHR). They attained promises, but nothing was done. In February 2012, the three communities informed the Council of the European Union about the lack of action.

## CONCLUSION

This case study confirmed that the Croatian state used the Instruction as an instrument of legal social control of (some) minority religions. By using discretion to regulate religion, the state affected the position of the religious communities. On the other hand, the minority religious communities used the law to challenge their detractors. This case study, as well as the ruling of the ECHR, shows that the Croatian state:

- Discriminates against some registered religious communities by denying them the same rights granted some other registered religious communities, giving them conditions impossible to fulfil, and refusing to conclude agreements with them;
- Discriminates against them by registering some religious communities that do not fulfil particular legal conditions, even for registration (e.g., the Montenegro Orthodox Church, Jewish Community Bet Israel, etc.).

In effect, this evokes a situation similar to that in Austria and the Czech Republic where an official hierarchy of religious communities exists, implying that such a hierarchy, although not apparent on a normative level in Croatia, is present in reality.

The analysis also shows that governmental officials can influence the position of religious communities while making decisions or giving misinformation based on their perceptions of a situation or on their personal values and biases.

Nevertheless, Croatia is not at the top of the list of former communist countries in the CEE concerning violations of religious freedom of minority religions. No anti-cult activities or movements are present so far (compared to Poland during the 1990s), and there are few legal cases concerning religious discrimination of minority religion (unlike in Russia). Moreover, unlike Western European countries and some post-communist countries, there have been no official reports in Croatia of "dangerous cults and sects" that can seriously influence legislation and public opinion.

The fact that the government of Croatia did not appeal the decision of the ECHR points to important consequences for the state of religious rights, religious freedom, social justice, and governing by the rule of law in Croatia. It is not clear yet how the ruling will affect future church-state relations in Croatia, e.g., if and in what way the government will change its Instruction and the Religious Communities Act and, consequently, the way it treats minority religious communities.

Following Ferrari's (2003) suggestions about areas where progress in church-state relations could be made, we can only conclude that the Croatian legal system, in common with most of those in other CEE countries, appears to be deficient in this respect.

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<sup>17</sup> This fact is also presented in the International Religious Freedom Report for 2011 United States Department of State, Bureau of Democracy, Human Rights and Labor (Appendix).

Finally, irrespective of the fact that this case would improve rate of rulings according to Article 14 and Article 9, it remains to be seen whether the ECHR's judgement will be influential in the law and practice of its signatory member.

For now, we can say that by interfering with the legal status of religious communities the Croatian state promotes their inequality, reviving Orwell's famous sentence (paraphrase):

All religious communities are equal, but some are more equal than others.

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## APPENDIX

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